



sent on February 24, 2004;<sup>2</sup> and

it appearing that the letter specifically stated that Plaintiff had six months from the date of the letter to file suit in the matter or, in the alternative, submit a written request for reconsideration of the decision; and

it appearing that Plaintiff neither filed a written request for reconsideration of the claim nor brought suit based upon the claim within six months of February 24, 2004; and

it appearing that Plaintiff's employer's workers' compensation carrier, the Liberty Mutual Insurance Company ("Liberty Mutual"), filed a second claim with the USPS on February 1, 2005, which was denied by the Postal Service on February 14, 2005; and

it appearing that Liberty Mutual sought reconsideration of the February 14, 2005 denial on August 12, 2005, and that the application for reconsideration of the second claim was also denied by the USPS, on September 12, 2005; and

it appearing that Plaintiff filed suit against the USPS and the federal government pursuant to the FTCA on February 22, 2006, almost two years after receiving the February 24, 2004 letter indicating the USPS had denied his initial claim; and

it appearing that the purpose of the FTCA is to provide for a limited waiver of sovereign immunity for tort suits brought against the federal government, see United States v. Kubrick, 444 U.S. 111 (1979); and

it appearing that courts have strictly construed the procedural requirements of the Act, see Commonwealth of Pennsylvania v. National Association of Flood Insurers, 520 F.2d 11, 19-20

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<sup>2</sup>The government has provided certified mail receipts to demonstrate that Plaintiff's attorney received the letter on February 27, 2004.

(3d Cir. 1975), overruled on other grounds, 659 F.2d 306 (3d Cir. 1981) (“Although the purpose of the Federal Tort Claims Acts is essentially remedial, the procedures established pursuant to the Act nonetheless have been strictly construed inasmuch as the Act constitutes a waiver of sovereign immunity.”); accord Bialowas v. United States, 443 F.2d 1047 (3d Cir. 1971); Flickinger v. United States, 523 F. Supp. 1372, 1375 (E.D. Pa. 1981); and

it appearing that jurisdiction for a suit brought pursuant to the FTCA is governed by 28 U.S.C. § 1346, which states that “the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States for money damages”, see 28 U.S.C. § 1346(b); and

it appearing that this requirement is further clarified in 28 U.S.C. § 2679, which states that a person bringing an FTCA suit must sue the United States, and not the federal agency whose employees were allegedly negligent, see 28 U.S.C. § 2679(a) (“The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title ...”); see also Galvin v. Occupational Safety & Health Admin., 860 F.2d 181, 183 (5th Cir. 1988); Dilg v. United States Postal Service, 635 F. Supp 406, 407 (D.N.J. 1982); and

it appearing that Plaintiff here has improperly named the USPS as a defendant; and

it appearing that the FTCA further provides that a civil action must be brought within six months of the denial of an administrative claim, see 28 U.S.C. § 2401(b) (“a tort claim against the United States shall be forever barred unless ... action is begun within six months after the date of mailing by certified or registered mail of notice of the final denial of the claim by the agency to which it is presented”); see also Pascale v. United States, 998 F.2d 186, 190 (3d Cir.1993); Bialowas v. United States, 443 F.2d 1047, 1049 (3d Cir. 1971); and

it appearing that neither Plaintiff nor Liberty Mutual can use the filing of a second claim as an end-run around the requirements of 28 U.S.C. § 2401(b), which were triggered by the filing of the first claim and exhausted six months after the issuance of the February 24, 2004 letter, see Willis v. United States, 719 F.2d 608, 613 (2d Cir. 1983) (finding “little force in the contention that plaintiffs could escape the consequences of their failure to bring suit within six months of the denial of their claims by filing new claims within the allowable two year period,” as “the bar cannot be avoided by starting all over again.”); Mentis v. United States Postal Service, 547 F.Supp. 164, 165 (W.D.N.Y. 1982) (holding that an insurance carrier’s suit pursuant to the FTCA was time-barred despite the fact that the insurance carrier’s suit was filed within six months of the denial of its claim, as the insured had filed an earlier claim and the six-month period for filing suit based on that earlier claim had elapsed long before the insurance carrier filed its suit); and

it appearing that the Plaintiff has failed to present any other circumstances which would toll the six-month requirement, and understanding that the Third Circuit has, in any event, acknowledged that no such circumstances exist, see Peterson v. United States, 694 F.2d 943, 944-45 (3d Cir. 1982) (“an injured person must comply with the applicable terms of and conditions prescribed by Congress [in the FTCA], including strict observance of the limitations period, which cannot be extended by equitable tolling considerations”);

**IT IS**, on this 17th of May, 2007, hereby

**ORDERED** that Defendants’ Motion to Dismiss is **GRANTED** and that this case is closed.

/s/ Faith S. Hochberg  
Hon. Faith S. Hochberg, U.S.D.J.